

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF MISSOURI

3 IN RE: ASHLEY MADISON CONSUMER )  
4 DATA SECURITY BREACH LITIGATION, )  
5 ) MDL No. 2669  
6 ) Cause No.4:15MD-2669JAR  
7 )  
8 )

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7 TRANSCRIPT OF PROCEEDINGS  
August 5, 2016

8 BEFORE THE HONORABLE JOHN A. ROSS  
9 UNITED STATES DISTRICT JUDGE  
10 EASTERN DIVISION  
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APPEARANCES

11 For Plaintiffs:

12 Mr. John Driscoll  
13 Mr. Andrew Kinghorn  
14 Mr. Christopher Quinn  
15 Mr. Gregory Pals  
16 Mr. Philip Sholtz  
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20 Mr. Douglas Dowd  
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25 Mr. William Garrison Jr.(via phone)  
Mr. James McDonough(via phone)  
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(Appearances continued)

Reported by:

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1                                    AUGUST 5, 2016

2        (The proceedings commenced at 10:15 a.m.)

3                    THE COURT:    We are here and on the record in the  
4        multidistrict litigation case titled:    In re Ashley Madison  
5        Customer Data Security Breach litigation.    It is MDL number  
6        2669.    It is our case number 4:15MD-2669.

7                    Let the record reflect we have counsel here in the  
8        courtroom.    We have counsel on the phone.    Just as an initial  
9        matter, the plaintiffs appear by colead counsel John  
10       Driscoll, and I think William Garrison, are you on the phone;  
11       is that correct?

12                   MR. GARRISON:    Yes, your Honor.

13                   THE COURT:    Okay, great.    Liaison counsel Doug Dowd  
14        appears as well.    On behalf of the defendants, we have lead  
15        counsel Robert Atkins.

16                   MR. ATKINS:    Good morning, your Honor.

17                   THE COURT:    Liaison counsel Rick Cassetta.

18                   MR. CASSETTA:    Good morning, your Honor.

19                   THE COURT:    I'm going to go through who I show who  
20        is on the phone.    I understand Carin Marcussen, have you  
21        joined the call?    Okay, Carin had indicated that she was  
22        going to join the call but has not yet joined.

23                   William Garrison is on the phone.    Debbie Quinn,  
24        you are on the phone; is that correct?

25                   Okay.    I don't -- I had received an indication that

1 she was going to be participating by phone, but apparently  
2 has not joined the call. Christopher Hinton, you are on the  
3 phone; is that correct?

4 MR. HINTON: Correct, your Honor, good morning.

5 THE COURT: Good morning. Gary Mason, you are on  
6 the phone. And again, I had received an indication that  
7 Mr. Mason would be on the phone, but he has not joined the  
8 call. James McDonough?

9 MR. MCDONOUGH: Yes, your Honor.

10 THE COURT: Great, thank you. Then finally, Thomas  
11 Zimmerman. Mr. Zimmerman, you are on the line?

12 MR. ZIMMERMAN: Yes, I'm here, thank you, Judge.

13 THE COURT: Anybody else on the phone that I have  
14 not identified -- and that may be somebody joining the call.

15 MR. MASON: Yes, this is Gary Mason. I apologize  
16 for the delay.

17 THE COURT: Gary, you are on the line now; is that  
18 correct?

19 MR. MASON: Yes.

20 THE COURT: Anybody else on the phone line, okay.  
21 And here present in the courtroom, in addition to those that  
22 I have previously indicated, Helen Looney is here on behalf  
23 of the defendants, and Yahnnes Cleary.

24 MR. CLEARY: Yes, your Honor.

25 THE COURT: Great. Have I missed anybody? Yes.

1 MR. DUMAIN: Ian Dumain for Noel Biderman.

2 THE COURT: Okay. I'm glad you are here,  
3 Mr. Dumain. And then in terms of other counsel here, present  
4 from the Driscoll Firm, I know there are a number of people,  
5 Andrew Kinghorn.

6 MR. KINGHORN: Yes, your Honor.

7 THE COURT: And Alex Lumaghi with Dowd & Dowd.

8 MR. LUMAGHI: Yes, your Honor.

9 THE COURT: And Gary Pals with the Driscoll Firm.

10 MR. PALS: Gregory, good morning, Judge.

11 THE COURT: I'm sorry, Chris Quinn with the  
12 Driscoll Firm, and Phil Sholtz with the Driscoll Firm. Have  
13 I missed anybody? Okay, that's half of the battle getting  
14 everybody identified. I'm glad to have everyone here in  
15 person and on the phone.

16 We also, I guess as a preliminary matter, had a new  
17 case that was transferred in from the panel. It is *Thadeaus*  
18 *Scharf verses Avid Life et al*, from the Eastern District of  
19 Arkansas. And Mr. Driscoll, have you spoken to counsel?

20 MR. DRISCOLL: No, we have not, but we will reach  
21 out to them. A lot of the deadlines have already gone  
22 forward. I don't know how we will necessarily be able to  
23 wrap them in, if you will, to the consolidated matter at this  
24 point. So any guidance -- maybe it is premature to ask --  
25 but any guidance from the Court?

1           THE COURT: I guess my guidance would be again,  
2 reach out to them. If they are going to join the  
3 consolidated complaint, then I'll give you leave to add them  
4 to the consolidated complaint.

5           MR. DRISCOLL: Yes.

6           THE COURT: I think, just as a preliminary matter,  
7 that's the way to proceed. And if there is any other issue,  
8 you can notify the Court, and I can address that. I think  
9 that's the way to proceed. I'm assuming there is no  
10 objection from the defendants?

11          MR. ATKINS: No. And I'm presuming they will  
12 stipulate to joining the consolidated complaint, but we  
13 should try to do everything we can to get them wrapped in by  
14 the time we get to the motion to compel arbitration at the  
15 end of the month.

16          THE COURT: And I think that is sort of the goal  
17 would be to have everybody who is going to be involved with  
18 the consolidated complaint joined, and I'll get to that issue  
19 a little bit later here this morning. But that would be my  
20 hope. So if you can just advise the Court if there is any  
21 issue with regard to that.

22          MR. DRISCOLL: I will do just that.

23          THE COURT: Okay. I do want to get to the joint  
24 proposed agenda items here this morning. The first agenda  
25 item is the parties' objections to the other side's discovery

1 request, and I know you have served discovery requests, and  
2 the responses, I believe, are due today. And I'm sure that  
3 once you have seen the responses, you will know a little bit  
4 better of where you are at.

5           It may be that these things can -- really items  
6 one, two, and three, the objections to the other side's  
7 discovery request, the sufficiency of the responses, and the  
8 timing and briefing of the motions to compel, overlap I  
9 suppose.

10           I guess as a preliminary matter, I just want to get  
11 the parties' positions with regard to those. So maybe we can  
12 start with the plaintiffs' position. And Mr. Driscoll, if  
13 you will, to the extent that you can address all of those, I  
14 think that they are intertwined.

15           MR. DRISCOLL: Yes, your Honor, they absolutely  
16 are. As you mentioned, we expect to receive the defendants'  
17 responses today. So some of this is dependent upon what we  
18 receive today.

19           THE COURT: Make sure you are speaking into the  
20 microphone so that those on the phone can hear you.

21           MR. DRISCOLL: Yes, your Honor. So you know,  
22 although we have had some meet and confers with the defendant  
23 that lead us to believe that we are apart on a few issues,  
24 and that's what prompted us to include these items on the  
25 agenda today.

1           So -- but, and I think we should reserve in a final  
2 way receiving their responses, reviewing them, and then  
3 reporting back in that regard.

4           THE COURT: I assume that part of the issue is the  
5 scope of discovery.

6           MR. DRISCOLL: With regard to some of those  
7 differences, yes, it is a matter of scope.

8           THE COURT: Can you, without getting into too much  
9 detail, because it may very well be likely that the motions  
10 to compel have to be filed. I guess I'd like to know whether  
11 or not I can give you some initial guidance as you continue  
12 to meet and confer. I'm assuming after you receive the  
13 responses, that you will meet and confer.

14          MR. DRISCOLL: Yes.

15          THE COURT: And then determine whether or not you  
16 need to file the motions to compel. But perhaps if you can  
17 give me in just a very brief manner without getting into the  
18 details.

19          MR. DRISCOLL: I don't know that I can give a full  
20 recital of the differences, but I can give you a for  
21 instance. One of the defendant's responses concern is  
22 damages, individual damages of the various plaintiffs, and we  
23 objected to that as out of the scope of the motion to stay  
24 and compel arbitration.

25          It has damages of the individual plaintiffs



1 objectionable for other reasons are certainly outside the  
2 scope of a motion to stay and compel arbitration. So that's  
3 just a for instance. There has been a number of people  
4 working on this discovery, Chris Quinn, Gene Clay, Alex  
5 Lumaghi, and Jim McDonough on the phone. So if you needed  
6 more itemized ones, I would have to rely upon them to help  
7 out in that regard.

8 THE COURT: Sometimes there are categories of  
9 issues that I can hear about and maybe understand a little  
10 bit of the issue. So I don't know whether or not you can  
11 categorize them. I understand that specific issue.

12 MR. DRISCOLL: You are right in terms of scope.  
13 That's the largest category or umbrella, if you will, but to  
14 go through the various ones that are outside the scope, I  
15 would have to rely upon the help of others.

16 THE COURT: Well, let me ask this. In listing  
17 these items on the agenda, what are you hoping for me to do  
18 today with those items being listed.

19 MR. DRISCOLL: I'm afraid it is more anticipatory,  
20 really, that we don't want to say we need a hearing, or  
21 otherwise briefing schedule on a motion to compel, but to  
22 date in our meet and confers, we are still apart on some of  
23 these issues.

24 So we didn't want to say just that, because we  
25 haven't received the responses yet, and maybe other meet and

1 confers will resolve these things. But if it were today, I'm  
2 afraid that we would need a motion to compel briefing  
3 schedule.

4 THE COURT: Have you planned a meet and confer  
5 after receiving the responses?

6 MR. DRISCOLL: I don't believe the date has been  
7 set, no. I think we are going to receive the responses and  
8 go after that.

9 THE COURT: Okay. All right, maybe I can hear from  
10 Mr. Atkins, and then I can get back. Mr. Quinn, if there is  
11 more detail you want to give me, then we can get to that.  
12 Mr. Atkins, how are you, sir?

13 MR. ATKINS: Good morning, your Honor, Robert  
14 Atkins. The issue arose, and we teed it up immediately. We  
15 sent them a letter within a week we gave them their  
16 discovery. We had a meet and confer last Monday. We asked  
17 them to limit their request, and here is why.

18 We were a little surprised to see what they served  
19 categorized as limited discovery. They served 130 discovery  
20 requests, 62 interrogatories, 43 document requests, 20 some  
21 odd requests to admit, and we are -- let me be clear -- we  
22 are responding to almost all of it.

23 We will be producing today well over a majority of  
24 the interrogatories, certainly more than the 25 permitted by  
25 the Federal Rules. We are answering every request to admit,

1 and I think we are producing everything we talked about with  
2 your Honor. Let me just -- if I could -- take a moment.

3 when we were before your Honor last March, you  
4 said: I'm concerned about this matter of getting an  
5 agreement on the scope of discovery. That primarily it is  
6 the dates when people were logging on, agreeing to  
7 participate to, and three what the terms of the agreements  
8 were. And you asked what kind of issue do you anticipate  
9 with regard to scope. Mr. Driscoll said that's it. That we  
10 were entitled to all of the variations of the terms of  
11 conditions from the genesis to the filing of the suit.

12 You stressed to me that we should produce all of  
13 the modifications during the life of these terms and  
14 conditions. And then Mr. Hammond chimed in over the phone  
15 saying that we need the screen shots as well of when folks  
16 logged on, and clicked the button saying "I agree".

17 So we are producing today everything within that  
18 scope. All of the versions that we have of the terms and  
19 conditions, it is several dozen, as far back as we could  
20 find, number one. Two, all of the signup pages and screen  
21 shots of when the plaintiffs signed up. That's 65 screen  
22 shots.

23 For every plaintiff we are producing every account.  
24 when this was logged in. when it was last logged in, and  
25 when they agreed to the terms and conditions. On top of

1 that, we are producing for each of the 18 plaintiffs, their  
2 messages, their chats, the purchasing activity, purchase  
3 receipt, and all of the profile information about that.

4 Then on top of that, we are producing pages from  
5 the website identifying where to find the terms and  
6 conditions. I thought that's what we were doing.

7 when we got the discovery requests, we got, among  
8 the 62 interrogatories, the number itself is kind of numbing,  
9 but things like this, this is interrogatory 57, "separately  
10 list each user of Ashley Madison, each user, every user of  
11 Ashley Madison since 2001." That's millions of users, "and  
12 include each user's first name, last name, phone number,  
13 e-mail address, and user identification."

14 Then they asked for every user, millions of users,  
15 when they logged on. When they last logged on. I think  
16 that's well well beyond any definition of limited discovery.  
17 And there are a bunch of other examples of that relating to  
18 discovery about every user all the way back to 2001.

19 we raised it with them. We pointed it out to them  
20 we said "Take a shot at limiting or cutting those." They  
21 haven't done that. I'm hopeful that when they get our  
22 responses, and they see everything that we have produced,  
23 which is what we have discussed with the Court, and which Mr.  
24 Driscoll said "That's it." They will be satisfied.

25 But if we have to litigate it, you know, I suppose

1 we will. My primary concern here, your Honor, is that we not  
2 let the due date for the motion to compel slip, which is  
3 August 29th. I think that would be unfortunate. I mean,  
4 among other things, you can imagine, our view is we really  
5 shouldn't even be here. We should be in arbitration  
6 anywhere, and we would like to keep that date so we can get a  
7 resolution of that issue.

8           So I would propose that we set a program for  
9 dealing with these, if we have to. I would suggest that we  
10 have a meet and confer no later than Wednesday. That if  
11 there is anything left over, we each respectfully submit  
12 letters to your Honor next Friday, three pages, five pages,  
13 something that cuts to the chase. Replies if necessary,  
14 earlier that week, and if it is within your schedule and  
15 ability, maybe we can get those ruled upon, so that we can  
16 still get the motions filed on the 29th.

17           So that's the overview of my prospective about  
18 their discovery. Let me just address, since it has been put  
19 on the table, the one issue pertaining to our discovery  
20 requests.

21           We served much more focused, much more tailored and  
22 narrow discovery relating to who the plaintiffs are, so we  
23 can find them. And for the most part, we have gotten  
24 answers. We really have one issue where we just disagree,  
25 which is we simply asked for them to identify what type of

1 injury they are seeking relief for, not the numbers, not the  
2 timing, not the details, not damages discovery, but are you  
3 claiming physical harm. Are you claiming medical injury.  
4 Are you claiming emotional injury. Are you claiming economic  
5 loss. Just what's your claim, because it is not clear from  
6 the complaint, and the reason for that is I just find it sort  
7 of strange that we would be making a motion to compel  
8 arbitration without being able to write the first paragraph  
9 that says: These are the claims. This is the relief sought.  
10 It falls within the scope of the arbitration clause.

11 So all we want to know is what are their claims,  
12 and what categories of relief are they seeking. So that we  
13 can, you know, fully address the issue so.

14 THE COURT: You are certainly entitled to that  
15 information at some point in this litigation. There is no  
16 doubt about that. But what you are calling the first  
17 paragraph of your motion, it is going to say: whatever  
18 relief is being sought should be obtained through  
19 arbitration. That's really -- well, that's how it is going  
20 to be written.

21 MR. ATKINS: It certainly will if I don't get an  
22 answer.

23 THE COURT: It seems to me that without getting  
24 into too much into one particular question or not, that I  
25 would say to you that that on the face of it, it doesn't seem

1 like it is necessary for you at this stage of the discovery.

2 It sounds like, and I have to say, based on what  
3 you say about them asking for the name of every user since  
4 2001, I'm not quite sure I see how that is necessary for  
5 responding to any motion to stay and compel arbitration  
6 either.

7 So it seems to me that perhaps everybody needs to  
8 sit down and give a second thought to what they are asking  
9 for; and again, I just want to remind you, and we have talked  
10 about this, that this is a limited issue that we are dealing  
11 with at this stage. And I want to make sure that the  
12 discovery is focused on that limited issue. Let's get on  
13 with this part of the litigation.

14 MR. QUINN: Could I briefly respond to some of  
15 that, your Honor, because I don't want you left with the  
16 wrong impression.

17 THE COURT: Okay. I'm not drawing any inference of  
18 somebody being out in left field on this. I'm not drawing  
19 any adverse inference about anybody's conduct, actions. I'm  
20 sure you had a reason for it.

21 MR. QUINN: Well, for example. Here are the  
22 overriding issues--

23 THE COURT: You have to speak into the microphone.

24 MR. QUINN: --from our prospective. We can  
25 anticipate what this motion might look like, but we are not

1     psychic.  We haven't seen their motion.

2             So for example, if the motion is these 18  
3     particular plaintiffs have to arbitrate verses everyone is  
4     bond by arbitration, that might be a different motion.  So we  
5     are sort of at a disadvantage when we are trying to  
6     anticipatorily propound discovery against a hypothetical  
7     motion that we haven't seen yet.  It puts you in a difficult  
8     position.  So that's sort of the answer to that sort of the  
9     question.

10            But the numbers that you have heard don't tell the  
11    full story.  For example, you can basically cut our discovery  
12    request by a third instantly by combining all of the requests  
13    that say, for example, show us every page that has terms of  
14    service.  Show us every page that contains an arbitration  
15    agreement.  Show us every page that contains a class waiver.  
16    We could have combined questions like that, give us the stuff  
17    that talks about terms of service, arbitration, or class  
18    waiver, and we broke that up separately.

19            And part of the reason for that is again, we don't  
20    know what this motion is going to contain.  Is it going to be  
21    some of that, or is it going to be all of that.  So that it  
22    sort of necessitates the approaching of the discovery in the  
23    way that we did.

24            Certainly, we will meet and confer.  I think that  
25    we have -- we both want to not extend the briefing on the



1 arbitration issue. Both sides are in agreement that we want  
2 to stick to that schedule. I'm hopeful that we can resolve  
3 some of these issues. I just don't want the Court to get  
4 left with the impression that we were requesting completely  
5 irrelevant stuff. That's just simply not the case.

6 And if I can be convinced, based upon what sort of  
7 a motion that they are going file, that this is just  
8 something that's completely outside the scope of the motion,  
9 but that's something we will certainly talk about. But I  
10 don't think we can be accused of doing that.

11 THE COURT: well, let me just say this, I  
12 understand that you don't know what the motion is going to  
13 look like. And understanding that, I'm saying to you, maybe  
14 this will give you a little bit of a comfort level, if the  
15 motion gets filed, and you think there needs to be some  
16 supplemental discovery that needs to occur, and you can show  
17 me good cause why that needs to occur, I'm certainly willing  
18 to consider that. I'm not trying to foreclose anybody from  
19 getting what they need to make the motion and to respond to  
20 it.

21 So I want to make sure it is fully-briefed, and  
22 that you have all of the facts necessary to respond to it.  
23 So I don't know whether that gives you a comfort level, but  
24 that's certainly how I --

25 MR. DRISCOLL: I'll say it gives me a comfort

1 level, your Honor.

2 THE COURT: That's certainly how I feel about it.  
3 So I'm telling you that that's where we are at.

4 what I was going to suggest, and let me say I would  
5 like to see us keep that August 29th date for the filing of  
6 the motion. Because even with that date, it is not going to  
7 be fully-briefed until mid October under the schedule that I  
8 had set, because I was giving you 30 days to respond, and  
9 14 days to reply, and so that gets us into October.

10 Again, I think everybody would like to keep this  
11 moving along. I think that that's in everybody's interest.  
12 So I'd like to keep that August 29th date. In order to do  
13 that, I'd have to have a motion filed. And you are talking  
14 about a letter, and I think in a lot of circumstances, a  
15 letter might work. But it really needs to be a motion to  
16 compel. But that's got to be done pretty quickly.

17 So actually, what I was going to propose to you,  
18 and you can tell me what you think about it, is that you meet  
19 and confer on Monday after you have had today, the weekend,  
20 to look over the responses. And I hate to be giving you work  
21 over the weekend; but again, if we are going to try to keep  
22 that schedule, it's going to be tight.

23 I was going to say you file a motion to compel by  
24 Tuesday, and I'd give you -- each side seven days to respond  
25 to the motion to compel, and then three days to file a reply,

1 which would then get it fully-briefed to me on August 19th.

2 If I have a few days to go through it and get an  
3 order out, you can then get the motion filed by August 29th.  
4 Again, that's a tight timeframe. If you don't think that  
5 will work.

6 MR. ATKINS: We will get it done.

7 MR. DRISCOLL: I think it will be fine, your Honor.

8 THE COURT: Again, if you are all saying you think  
9 you can get it done, I'm going to go ahead and include that  
10 in an order that comes out of our hearing today.

11 If you need to adjust it by a day or two, and you  
12 can do it by agreement and still get this to me by the 19th,  
13 I'm okay with your adjusting it by a day or two. All I care  
14 about is that it gets to me by the 19th, so I have three or  
15 four days to look at it, get an order out, and get it back to  
16 you so you can then get the motion to stay and compel  
17 arbitration filed by the 29th so.

18 MR. ATKINS: That works, your Honor, thank you.

19 THE COURT: We will get an order out then, all  
20 right. And again, I know -- my impression is that everybody  
21 has worked very well together and cooperatively. I know you  
22 are going to continue to do that. Just please keep in mind  
23 the limited discovery, limited scope of the issues here that  
24 we are dealing with so. I know you will. So all right,  
25 okay.

1 MR. DRISCOLL: Yes, your Honor.

2 MR. ATKINS: Thank you, your Honor.

3 THE COURT: And let me ask you, Mr. Atkins, while  
4 you are up here, and Mr. Dumain is here. This has to do with  
5 defendant Noel Biderman's ability to file a separate motion  
6 and brief on the arbitration issue. You have talked to  
7 Mr. Dumain; is that correct, and discussed the issue with  
8 him?

9 MR. ATKINS: I have, yes.

10 THE COURT: Are you telling me that you believe  
11 that it is necessary for him to file a separate motion?

12 MR. ATKINS: Yes, I'll let --

13 THE COURT: And I'm going to let him speak. I  
14 don't mean to.

15 MR. ATKINS: There are issues that are separate and  
16 apart from the ones that we are briefing. So we are going to  
17 work so we have no duplication, but he has separate issues.

18 THE COURT: Mr. Dumain, maybe you can come up and  
19 explain the separate issues that you believe necessitate the  
20 filing of a separate motion on behalf of Noel Biderman.

21 MR. DUMAIN: Absolutely, your Honor, as a  
22 preliminary matter, I just want to remind the Court, as you  
23 probably remember, that on the March 4th hearing when Barnes  
24 and Thornburg were still in the case, Mr. Doerhoff, I think  
25 his name was, raised the issue of liaison counsel with

1 respect to the defendants, and you had said at that time,  
2 that you did not intend to foreclose any of the individual  
3 defendants from putting in briefs, if they thought they were  
4 necessary.

5 And you are asking why is it necessary. If the  
6 plaintiffs are willing to concede, and I wish they would,  
7 that the arbitration provision, to the extent they are  
8 enforceable, are enforceable as to -- by Mr. Biderman to the  
9 same extent that they are by the Avid defendants, then we  
10 don't need to file anything separate. But if they expect to  
11 take the position that there could be a situation in which  
12 the claims against Avid are sent to arbitration, but the  
13 claims against Biderman remain in this Court, then we want to  
14 address the issue of why the claims are intertwined and why  
15 this travels together.

16 So I would put it to the plaintiffs why they --  
17 whether or not they intend to make that argument. If they  
18 don't, we are happy to work with Avid to file one brief on  
19 the entire case, and all the claims should be sent to  
20 arbitration. But if they are drawing a distinction, we want  
21 to speak for ourself.

22 THE COURT: All right, thank you, Mr. Dumain. Mr.  
23 Driscoll, I'm not really asking you necessarily to commit  
24 yourself, but if you know that you are going to take the  
25 position that Mr. Biderman is in a separate position as it

1 relates to the enforceability of the arbitration provision,  
2 then it is probably helpful to know that.

3 MR. DRISCOLL: I don't know that I'm prepared to  
4 concede as I was invited to do. I would say I don't think  
5 that a separate brief is necessary. I think that any of  
6 those separate arguments could be incorporated within the  
7 brief that the defendant Avid is going to file, perhaps an  
8 extra five pages, or something of that nature.

9 I don't know how much more you can beat this dead  
10 horse after the brief that Mr. Atkins is planning on filing.  
11 So if it can be incorporated, I think that's fine. I think  
12 it might serve all. That would force me to not have to  
13 deliberate whether I'm going to concede anything or not, and  
14 I think it might satisfy Mr. Biderman if it was all roped  
15 into one. So that's my opinion, your Honor.

16 THE COURT: Okay. I guess my answer to this is I  
17 tend to agree that it seems to me it could be consolidated  
18 into a single brief. Having said that, if you want to file a  
19 separate response, you have leave of Court to do so.

20 I understand the issue with regard to the defendant  
21 Noel Biderman is separate and distinct, and there may be  
22 issues that need to be separately raised. So I suppose my  
23 answer to you, again, I just encourage you to work with  
24 counsel for Avid Life. If you believe it is necessary to  
25 file a separate motion or brief, then you have leave of Court

1 to do so.

2 MR. DUMAIN: Thank you, your Honor.

3 THE COURT: All right. This sort of ties into the  
4 actions of people separately, I suppose. But I want to raise  
5 another issue, and I think that those are all of the issues  
6 that you had in terms of the agenda.

7 The separate issue that I had is that there are, I  
8 believe, four named plaintiffs who were not included in the  
9 consolidated complaint, and perhaps two John Does, we believe  
10 were not included in the consolidated complaint. And I guess  
11 what I would like to know from you, Mr. Driscoll,  
12 Mr. Garrison, as lead counsel, if you have discussed the  
13 matter with counsel for those plaintiffs who have not joined  
14 the consolidated complaint and gotten any indication of how  
15 they intend to proceed, I don't believe that any of their  
16 counsel is present or on the phone.

17 Although, I had thought that counsel for Robin  
18 Fipps, Ms. Quinn, was going to join us on the phone.  
19 Ms. Quinn, you have not joined the phone call; is that  
20 correct? And I don't hear her, so I'll assume she is not.  
21 Again, I would just ask that you reach out to counsel for  
22 those plaintiffs who have not joined the consolidated  
23 complaint, and get some indication of how they intend to  
24 proceed. At some point, and I don't think I'm at that point,  
25 I will probably issue some kind of a show cause order if we

1 have no other response from them, just so that I can find out  
2 the status.

3 MR. DRISCOLL: Yes, your Honor.

4 THE COURT: But I'll just ask that you reach out to  
5 them.

6 MR. DRISCOLL: And we have thus far, and we will  
7 continue to do so. Thank you, your Honor.

8 THE COURT: Okay. Mr. Driscoll, Mr. Garrison, on  
9 behalf of the plaintiffs, anything else that we need to take  
10 up here today, Mr. Dowd, I'll join you.

11 MR. DOWD: No, your Honor.

12 THE COURT: Okay. And on behalf of the defendants,  
13 Mr. Atkins, Mr. Cassetta, anything else, Mr. Dumain.

14 MR. ATKINS: Nothing further, your Honor.

15 MR. DUMAIN: Nothing further.

16 MR. CASSETTA: Your Honor, on the schedule, the  
17 next status conference, your Honor, is scheduled for  
18 September 2nd, which I believe is the Friday before Labor  
19 Day.

20 THE COURT: That was on my last thing to take up.

21 MR. CASSETTA: Okay.

22 THE COURT: I think just because of the timing,  
23 first of all, it is the Friday of Labor Day weekend. It also  
24 would be just a couple of days after the filing of the motion  
25 to stay and compel arbitration. So I'd like to move that to



1 the following Friday, September 9th, at 10:00 a.m.

2 So we will include in our order, and it will go on  
3 the website as well, that the September 2nd date will be  
4 cancelled. It will be reset for September 9th at 10:00 a.m.  
5 It is conceivable again, because the motion will have been  
6 filed, will be in the period of where plaintiffs are  
7 preparing their response to the motion.

8 It is conceivable that we may not have issues to  
9 take up, but I want to go ahead and have a setting, and you  
10 can do as you have done, which is to just notify the Court  
11 that there are no agenda items, and then I can determine if I  
12 have anything separate that I need to address with you; and  
13 if I don't, then I can cancel it, and we will go to the  
14 following month. But I'd like to have a setting for  
15 September the 9th at 10:00 a.m.

16 MR. CASSETTA: Okay. Thank you, your Honor.

17 THE COURT: Okay. Anybody have anything else?  
18 Anybody on the phone have anything else that they need to  
19 take up with the Court?

20 Again, I appreciate you all being here, and I will  
21 see you in September. It is hard to believe that we are  
22 already into August and talking about September.

23 So that's why I was saying I hope you have been  
24 having a good summer, because it is moving along quickly. So  
25 again, thank you for being here. We will be in recess.

(The proceedings concluded at 10:50 a.m.)

## C E R T I F I C A T E

I, Lisa M. Paczkowski, Registered Professional Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 25 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated St. Louis, Missouri, this 11th day of August, 2016.

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/s/Lisa M. Paczkowski  
Lisa M. Paczkowski, CCR, CSR, RPR  
Official Court Reporter